IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.08.2020
Pronounced on	09.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.36791 of 2004
and
W.M.P.No.44158 of 2004

M/s.Geethanjali Exports,
Rep. by its Proprietor Mr.P.Jayachandran,
No.7, Artizan Shanmugam Street,
Ayanavaram, Chennai - 600023. ...Petitioner

Vs

1. The Assistant Commissioner of Customs,
(Drawback-EDI), Custom House,
60, Rajaji Salai, Chennai - 600001.

2. The Commissioner of Customs (Appeals),
Custom House, 60, Rajaji Salai,
Chennai - 600001.

3. The Joint Secretary to the
Government of India,
Revision Application,
Ministry of Finance,
Department of Revenue,
4th Floor, Jeevan Deep Building,
Sansad Marg (Parliament Street),
New Delhi - 110001. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent the Assistant Commissioner of Customs (Drawback-EDI), in Order-in-Original No.445/03 and File No.S3/XOS/10262/2002 DBK-EDI, dated 17.04.2003 as confirmed by the 2nd respondent the Commissioner of Customs (Appeals), in Appeal No.C48/299/D/2003-SEA and C.Cus.681/2003, dated 19.11.2003 and confirmed by the 3rd respondent the Joint Secretary (Revision Application), in order No.410-413/04 dated 31.08.2004 in Revision Application F.No.373/11/DBK/2004-RA and quash the same.

For Petitioner : Mr.A.K.Jayaraj

For Respondents: Mr.S.R.Sundar, SSC
for R1 to R3

O R D E R

The Writ Petition was called through Video Conferencing on 31.08.2020. By consent of both the parties, this Writ Petition is taken up for final disposal.

2. The petitioner herein had exported certain goods through 11 Shipping Bills in the year 2000-01 and claimed drawback to the tune of Rs.10,25,616/-, which was sanctioned by the department. Based on the information from the Reserve Bank of India, the first respondent had caused a notice dated 01.10.2002 to the petitioner, calling upon to show cause, as to why the drawback paid should not be recovered on account of non-realisation of sale proceeds, within the period allowed under FERA. During the course of personal hearing, the petitioner had submitted the Bank Realisation Certificates for 5 Shipping Bills only. Accordingly, the proposed recovery was confirmed by the first respondent on 17.04.2003. The appeal by the petitioner before the second respondent and the further revision before the third respondent came to be rejected. Hence, the present Writ Petition.

3. The learned counsel for the petitioner would submit that they are in possession of 6 Shipping Bills and are willing to approach the Authorities to substantiate their case and thereby sought for a lenient view for remanding the matter back.

4. The learned Standing Counsel appearing for the respondents 1 to 3, however, objected to the request and submitted that, in view of Rule 16A of the Drawback Rules, as well as the Circulars of the Reserve Bank of India, dated 09.09.2000 and 28.01.2002, the petitioner, since had failed to approach the Reserve Bank of India for obtaining the necessary extension, cannot seek for reconsideration of his case.

5. In my view, the issue as to whether the extension is granted by the Reserve Bank of India or whether the petitioner is entitled for the relief otherwise, being factual issues,

could be determined by the Revisional Authority himself, in line with the decision relied upon by the learned Standing Counsel for the respondents in ZAZ and ZAZ Pvt. Ltd. vs. Union of India reported in 2014 (305) E.L.T. 126 (All.), wherein the Hon'ble Division Bench of the Allahabad High Court was also of the view that factual aspects requires to be verified by the Authorities and accordingly remanded back the matter. Further, if the petitioner's entitlement for the relief is made subject to the prevailing rules and circulars in general and Rule 16A of the Drawback Rules, as well as the Circulars dated 09.09.2000 and 28.01.2002 of the Reserve Bank of India, in particular, are left open, no prejudice could be caused to the Revenue. Since this Court intends to remand the matter back to the third respondent, the merits of the claim made by both the parties are not answered.

6. In the light of the above observations, the matter is remanded back to the third respondent herein. The petitioner is granted liberty to submit the remaining 6 Shipping Bills and all other certificates and materials in support of his claim. On receipt of the same, the third respondent herein shall consider it on its own merits and in accordance with law, as expeditiously as possible.

7. The Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of Customs,
   (Drawback-EDI), Custom House,
   60, Rajaji Salai, Chennai - 600001.

2. The Commissioner of Customs (Appeals),
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   Chennai - 600001.

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Government of India,
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Department of Revenue,
4th Floor, Jeevan Deep Building,
Sansad Marg (Parliament Street),
New Delhi - 110001.

+1 cc to Mr.A.K.Jayaraj,Advocate Sr.No.29446

+1 cc to Mr.S.R.Sundar,Advocate Sr.No. 29488

Pre-delivery order made in
W.P.No.36791 of 2004
and
W.M.P.No.44158 of 2004

spd(co)
rv(24/9/2020)